

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV175-3-V
3:00CR222-2-MU

TERRY EUGENE CURETON,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court upon Petitioner’s “Motion to Vacate, Set Aside, or Correct Sentence” under 28 U.S.C. § 2255, filed April 27, 2005. [Doc. 1] For the reasons stated herein, the Petitioner’s Motion to Vacate will be dismissed.

The Petitioner filed a previous Motion to Vacate, Set Aside or Correct Sentence which was denied by this Court on July 9, 2004. (See 3:03cv226-MU) Petitioner’s previous § 2255 filing makes the instant filing successive under the Antiterrorism and Effective Death Penalty Act (the “AEDPA”). See 28 U.S.C. § 2255. The AEDPA requires that a “second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . .” before it can be filed in the District Court. Id. Thus, this Court may not consider the merits of Petitioner’s claims because he failed to first certify his motion with the Fourth Circuit Court of Appeals before filing it in the District Court.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate pursuant to 28 U.S.C. § 2255 is DISMISSED WITHOUT PREJUDICE as successive¹.

Signed: May 3, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge



¹ The Court also notes that it appears this Motion to Vacate is not timely filed under the AEDPA as it is filed more than one year after Petitioner's conviction became final.